

a member with dependents solely by reason of a court order requiring the member to pay support for dependents; or”

Subsec. (c)(1), (4), Pub. L. 99-145, § 602(c)(1), inserted “and with the same dependency status” after “in the same pay grade” wherever appearing.

Subsec. (c)(6), Pub. L. 99-145, § 602(c)(2), added par. (6).

Subsec. (e)(1), Pub. L. 99-145, § 602(d), designated existing provisions as par. (1) and added pars. (2) and (3).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 604(b) of Pub. L. 102-190 effective six months after Dec. 5, 1991, see section 604(c) of Pub. L. 102-190, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 602(b) of Pub. L. 101-189 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1990.”

EFFECTIVE DATE OF 1985 AMENDMENT

Section 602(f) of Pub. L. 99-145 provided that:

“(1) The amendments made by subsections (a), (b), and (d) [amending this section] shall take effect on October 1, 1985.

“(2) The amendments made by subsection (c)(1) [amending this section] shall apply as if included in the enactment of section 403a of title 37, United States Code, by section 602(d) of the Department of Defense Authorization Act, 1985 (Public Law 98-525).

“(3) The amendment made by subsection (c)(2) [amending this section] shall take effect on the first day of the first month beginning 90 days or more after the date of the enactment of this Act [Nov. 8, 1985].”

Amendment by section 604(b) of Pub. L. 99-145 effective Oct. 1, 1985, see section 604(c) of Pub. L. 99-145, set out as a note under section 403 of this title.

EFFECTIVE DATE

Section 602(f) of Pub. L. 98-525, as amended by Pub. L. 99-145, title VI, § 603(b), Nov. 8, 1985, 99 Stat. 637; Pub. L. 99-661, div. A, title XIII, § 1342(b), Nov. 14, 1986, 100 Stat. 3991, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 403 and 405 of this title, section 7572 of Title 10, Armed Forces, and provisions set out as a note under section 403 of this title, and enacting provisions set out as a note under section 403 of this title] shall take effect on January 1, 1985.

“(2)(A) A member shall be entitled to receive a station housing allowance under section 405 of title 37, United States Code, as if the amendments made by subsection (e) [amending section 405 of this title] had not been enacted, if the member, on the date of the enactment of the Department of Defense Authorization Act, 1986 [Nov. 8, 1985]—

“(i) is assigned to a permanent duty station in Alaska or Hawaii; and

“(ii) is entitled to payment of a temporary lodging allowance or a station housing allowance under section 405 of such title.

“(B) A member who is entitled to a station housing allowance by reason of subparagraph (A) shall only be entitled to such allowance until the earlier of—

“(i) the date on which the member changes residence in conjunction with a permanent change of duty station; or

“(ii) the expiration of the four-year period beginning on the date of the enactment of the Department of Defense Authorization Act, 1986 [Nov. 8, 1985].

“(C) A member who is entitled to a station housing allowance by reason of subparagraph (A) shall not be entitled to a variable housing allowance, except that such a member serving an unaccompanied tour of duty in Alaska or Hawaii may be paid a variable housing allowance based on the residence of the member's dependents in another State.

“(3) For the period beginning on January 1, 1985, and ending on September 30, 1985, the limitation applicable under subsection (d)(1) of section 403a of title 37, United States Code (as added by subsection (d)), on the total amount that may be paid during a fiscal year for the variable housing allowance authorized members of the uniformed services by that section shall be 15 percent of the median annual costs of housing in the United States for members of the uniformed services as measured during fiscal year 1984. In determining for the purposes of clause (A) of such subsection the total amount authorized to be paid for such allowance for fiscal year 1985, such amount shall be determined as if the amendments made by this section took effect on October 1, 1984.”

[Amendment of this note by Pub. L. 99-661 effective Nov. 14, 1986, see section 1342(h)(1) of Pub. L. 99-661, set out as an Effective Date of 1986 Amendment note under section 301 of this title.]

SAVINGS PROVISION; 1985 AMENDMENT

Section 602(e) of Pub. L. 99-145 provided that: “A member described in paragraph (4) of section 403a(a) of title 37, United States Code, as added by subsection (a), who on September 30, 1985, is receiving variable housing allowance at the rate applicable to a member with dependents shall continue to be entitled to variable housing allowance at the appropriate rate applicable to a member with dependents until the member departs his duty station as a result of a permanent change of station.”

RESERVE AND RETIRED MEMBERS SERVING IN CONNECTION WITH PERSIAN GULF CONFLICT

Section 303 of Pub. L. 102-25 provided that:

“(a) USE OF PRINCIPAL PLACE OF RESIDENCE.—For the purpose of determining the entitlement of a Reserve described in subsection (b) to a variable housing allowance under section 403a of title 37, United States Code, the Reserve shall be considered to be assigned to duty at the Reserve's principal place of residence, determined as prescribed by the Secretary of Defense.

“(b) RESERVE DESCRIBED.—A Reserve referred to in subsection (a) is a member of a reserve component of the uniformed services who is serving on active duty under a call or order to active duty in connection with Operation Desert Storm and is assigned to duty away from the Reserve's principal place of residence, determined as prescribed by the Secretary.”

Section 1111(b) of Pub. L. 101-510, as amended by Pub. L. 102-25, title III, § 314(1), (2)(A), (B), Apr. 6, 1991, 105 Stat. 86, provided that:

“(1) In the case of Reserve members called or ordered to active duty (other than for training) and retired members called to active duty under section 688 of title 10, United States Code, in connection with the Persian Gulf conflict, the variable housing allowance under section 403a of title 37, United States Code, shall be paid to such members without regard to the limitation in subsection (b)(3) of that section.

“(2) The limitation in subsection (d) of that section on the total amount of variable housing allowance that may be paid for a fiscal year shall not apply for fiscal year 1991 or for fiscal year 1992.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403 of this title; title 2 section 906; title 10 section 7572.

§ 403b. Cost-of-living allowance in the continental United States

(a) PAYMENT AUTHORIZED.—The Secretary concerned may pay a cost-of-living allowance to the eligible members of a uniformed service under the jurisdiction of the Secretary.

(b) ELIGIBLE MEMBERS.—The following members are eligible to receive a cost-of-living allowance under this section:

(1) A member assigned to a high cost area in the continental United States.

(2) A member assigned to an unaccompanied tour of duty outside the continental United States if the primary dependent of the member resides in a high cost area in the continental United States.

(3) A member assigned to duty in the continental United States if the Secretary of the uniformed service concerned determines that—

(A) the primary dependent of the member must reside in a high cost area in the continental United States by reason of the member's duty location or other circumstances; and

(B) it would be inequitable for the member's eligibility for the allowance to be determined on the basis of the duty location of the member.

(c) **HIGH COST AREA DEFINED.**—An area is a high cost area for a fiscal year for purposes of this section if the uniformed services cost of living for that area for the base period exceeds the average cost of living in the continental United States for such base period by at least the threshold percentage. The Secretary of Defense, in consultation with the other administering Secretaries, shall establish the threshold percentage, except that the threshold percentage may not be less than 8 percent. The administering Secretaries shall prescribe a higher threshold percentage to be applied for a fiscal year when it is necessary to do so in order to ensure that the total amount of the payments of the cost-of-living allowance made to members of the uniformed services under this section for such fiscal year does not exceed the total amount available to all uniformed services for that fiscal year for paying such allowance.

(d) **AMOUNT OF ALLOWANCE.**—The cost-of-living allowance that may be paid to a member for a high cost area for a fiscal year shall be the amount that is equal to the product of—

(1) the amount of the average spendable income determined applicable for the regular military compensation level of such member under subsection (g); and

(2) the percentage equal to the excess of—

(A) the percentage by which the uniformed services cost of living for the member's high cost area for the base period exceeds the average cost of living in the continental United States for such base period, over

(B) the threshold percentage applicable to such fiscal year under subsection (c).

(e) **LIMITATION TO ONE ALLOWANCE.**—If primary dependents of a member reside separately in different high cost areas—

(1) the member may be paid only one cost-of-living allowance under this section; and

(2) the cost-of-living allowance payable to the member shall be the highest of the amounts computed under this section for such high cost areas.

(f) **SERVICE NOT COVERED.**—(1) A cost-of-living allowance may not be paid a member under this section for the days authorized for travel of the member in connection with a permanent change of duty station.

(2) A member of a reserve component is not eligible for a cost-of-living allowance under this section unless the member is on active duty under a call or order to active duty that—

(A) specifies a period of 140 days or more; or

(B) states that the call or order to active duty is in support of a contingency operation.

(g) **AVERAGE SPENDABLE INCOME.**—The Secretary of Defense shall determine, using a methodology and assumptions that the Secretary considers appropriate, the amounts of average spendable income of members of the uniformed services for various ranges of regular military compensation. For purposes of this subsection, spendable income is the total amount of regular military compensation that is available for purchase of goods and services after allocation of amounts for taxes, insurance, housing, gifts and contributions, and savings.

(h) **JOINT REGULATIONS.**—The Secretary of Defense and the other administering Secretaries shall jointly prescribe regulations to carry out this section.

(i) **OTHER DEFINITIONS.**—In this section:

(1) The term “primary dependent”, with respect to a member, means—

(A) the member's spouse; or

(B) in the case of an unmarried member, a dependent described in paragraph (2) or (4) of section 401(a) of this title.

(2) The term “cost of living” means a price index selected by the Secretary of Defense, in consultation with the other administering Secretaries, from among the following indices:

(A) The Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(B) Any other index developed in the private sector that the Secretary of Defense, in consultation with the other administering Secretaries, determines is comparable to the Consumer Price Index and is appropriate for use for purposes of this section.

(3) The term “uniformed services cost of living” means the price index selected as described in paragraph (2) and adjusted as the Secretary of Defense, in consultation with the other administering Secretaries, considers appropriate to reflect variations between expenses of members of the uniformed services (as offset by the basic allowance for subsistence) and the corresponding expenses of persons not members of the uniformed services with regard to the following:

(A) Nonhousing costs (including costs of transportation, goods, and services, taking into consideration savings attributable to use of such military facilities as commissary stores and exchange stores).

(B) Average income tax paid.

(C) Cost of health care.

(4) The term “base period”, with respect to a fiscal year, means the 12-month period ending on June 30 of the year in which such fiscal year begins.

(5) The term “administering Secretaries” means the following:

(A) The Secretary of Defense, with respect to the armed forces (other than the Coast

Guard when it is not operating as a service in the Navy).

(B) The Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy.

(C) The Secretary of Commerce, with respect to the National Oceanic and Atmospheric Administration.

(D) The Secretary of Health and Human Services, with respect to the Public Health Service.

(6) The term "continental United States" means the 48 contiguous States and the District of Columbia.

(Added Pub. L. 103-337, div. A, title VI, § 602(a)(1), Oct. 5, 1994, 108 Stat. 2779.)

CONDITIONS ON PROVISION OF ALLOWANCE

Section 602(b) of Pub. L. 103-337 provided that:

"(1) A cost-of-living allowance under section 403b of title 37, United States Code, as added by subsection (a), may not be provided until after the end of the 90-day period beginning on the date the Secretary of Defense submits the report required under paragraph (2).

"(2) Before implementing section 403b of title 37, United States Code, the Secretary of Defense, in consultation with the other administering Secretaries (as defined in subsection (h)(6) of such section), shall submit to Congress a report describing—

"(A) the methods by which the Secretary of Defense would determine the price index to be used under such section and the types of nonhousing related costs that will be considered under such price index;

"(B) the manner by which the Secretary will establish the threshold percentage for purposes of such section;

"(C) the manner in which savings attributable to use of such military facilities as commissary stores, exchange stores, and military medical treatment facilities will be taken into consideration; and

"(D) the methods by which the Secretary proposes to prevent uncontrolled growth in Government expenditures through the cost-of-living allowance available under such section."

[Report submitted by Secretary of Defense on Mar. 31, 1995.]

§ 404. Travel and transportation allowances: general

(a) Except as provided in subsection (f) and under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation—

(1) upon a change of permanent station, or otherwise, or when away from his designated post of duty regardless of the length of time he is away from that post;

(2) upon appointment, call to active duty, enlistment, or induction, from his home or from the place from which called or ordered to active duty to his first station;

(3) upon separation from the service, placement on the temporary disability retired list, release from active duty, or retirement, from his last duty station to his home or the place from which he was called or ordered to active duty, whether or not he is or will be a member of a uniformed service at the time the travel is or will be performed;

(4) when away from home to perform duty, including duty by a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, in his status as a member of the National Guard, for which he is entitled to, or has waived, pay under this title; and

(5) when not on active duty, if assigned to a Reserve school, and attending a reserve training meeting for the purpose of performing duties as an instructor at such meeting, if such meeting is 100 or more miles from the site at which the member would attend paid drills of the Reserve school to which he is assigned.

(b)(1) The Secretaries concerned may prescribe—

(A) the conditions under which travel and transportation allowances are authorized, including advance payments thereof; and

(B) the allowances for the kinds of travel, but not more than the amounts authorized in this section.

(2) In prescribing such conditions and allowances, the Secretaries concerned shall provide that a member who is performing travel under orders away from his designated post of duty and who is authorized a per diem under clause (2) of subsection (d) shall be paid for the meals portion of that per diem in a cash amount at a rate that is not less than the rate established under section 1011(a) of this title for meals sold to members. The preceding sentence shall not apply with respect to a member on field duty or sea duty (as defined in regulations prescribed under section 402(e) of this title) or a member of a unit with respect to which the Secretary concerned has determined that unit messing is essential to the accomplishment of the unit's training and readiness.

(c)(1) Under uniform regulations prescribed by the Secretaries concerned and as provided in paragraph (2), a member who—

(A) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10;

(B) is retired with pay under any other law, or, immediately following at least eight years of continuous active duty with no single break therein or more than 90 days, is discharged with separation pay or severance pay or is involuntarily released from active duty with separation pay or readjustment pay; or

(C) is involuntarily separated from active duty during the nine-year period beginning on October 1, 1990,

may, not later than one year from the date he is so retired, placed on that list, involuntarily separated, discharged, or released, except as prescribed in regulations by the Secretaries concerned, select his home for the purposes of the travel and transportation allowances authorized by subsection (a).

(2) A member authorized under paragraph (1) to select a home for the purposes of such allowances may select as his home—

(A) any place within the United States;

(B) the place outside the United States from which the member was called or ordered to active duty to his first duty station; or